

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CASE No. 08-20537-1

Plaintiff,

SENIOR U.S. DISTRICT JUDGE

v.

ARTHUR J. TARNOW

D-1 THOMAS ROBINSON,

Defendant.

**ORDER FINDING DEFENDANT'S MOTION TO VACATE SENTENCE [165] MOOT
AND GRANTING DEFENDANT'S MOTION FOR REDUCTION OF SENTENCE [168]**

Before the Court is Defendant Robinson's Motion to Vacate Sentence Under 28 U.S.C. § 2255 [165], and Defendant's Motion for Reduction of Sentence Pursuant to the Fair Sentencing Act and the 2011 Crack Guideline Amendments [168].

For the reasons stated below, Defendant's Motion to Vacate [165] is found MOOT, and Defendant's Motion for Reduction of Sentence [168] is GRANTED. Defendant Robinson will be resentenced pursuant to this order.

Procedural History

On April 28, 2010, a Plea Agreement [85] was filed in which Defendant pleaded guilty to Counts 1 and 7 of the Indictment [1]. Count 1 charged violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 846, Conspiracy to Distribute Controlled Substances, in the amount of 73.02 grams of crack cocaine. Count 7 charged violation of 21 USC § 841(a)(1), Distribution of a Controlled Substance, in the amount of 8.36 grams of crack cocaine.

This Court held a sentencing hearing on July 26, 2010. The Plea Agreement [85] established that Defendant's sentencing guideline range was 135-168 months based on an offense level of thirty-three and a criminal history category of I. At the time of Defendant's sentencing, Count 1 required a mandatory minimum sentence of ten years, and Count 7 held a mandatory minimum sentences of five years. This Court imposed both minimum sentences, to be served concurrently, in a Judgment [97] filed on August 3, 2010.

Defendant filed its Motion to Vacate [165] on May 23, 2013, and its Motion for Reduction of Sentence [168] on May 28, 2013.

Analysis

Defendant now seeks retroactive application of the Fair Sentencing Act of 2010, and a reduction in his sentence pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1.B1.10.

The Fair Sentencing Act of 2010 reduced sentences for crack cocaine related drug offenses, including the mandatory minimum sentences imposed in this case. *See* 21 U.S.C. § 841(b) (increasing the amount of crack from 50 grams to 280 grams to trigger the 10-year mandatory minimum and from 5 grams to 28 grams to trigger the five-year mandatory minimum). The Sixth Circuit Court has recently held that this reduction must be applied retroactively to all defendants, including those defendants sentenced before the passage of the Act. *See United States v. Cornelius Demorris Blewett* 12-5226 & *Jarreous Jamone Blewett* 12-5582, __F.3d__, 2013 U.S. App. LEXIS 9889, at *3 (6th Cir. 2013)(petition pending for en banc review). The Sixth Circuit Court specifically rejected the Government's objection that § 3582(c)(2) prohibits the courts from altering a mandatory minimum sentence. The court in *Blewett* held that "[t]he statutory minimums

have been reduced and incorporated into the guidelines by the Sentencing Commission. The old, repealed discriminatory minimums are no longer a part ‘of the operation of’ the sentencing system. They should not be used to foreclose ‘lowering the defendant’s applicable guideline range.’ *Id.* at 30 (*citing* 18 U.S.C. § 3582(c)(2)).

It should be noted that this Court has already granted resentencing in the case of co-Defendant Cedarrius Frost, who was charged with and pled guilty to an identical count of conspiracy to distribute. This Court granted resentencing based upon the Supreme Court’s ruling in *Dorsey*. The Fair Sentencing Act took effect on August 3, 2010. Based on this date, the Court in *Dorsey* held that the Fair Sentencing Act applied to “those offenders whose crimes preceded August 3, 2010, but who are sentenced after that date.” *Dorsey v. United States*, 132 S. Ct. 2321, 2331 (U.S. 2012). Because co-Defendant Cedarrius Frost was sentenced on August 20, 2010, the Fair Sentencing Act may be applied to modify his sentence. The difference between co-Defendant Cedarrius Frost and the instant case is that Defendant Cecil Frost was sentenced prior to August 3, 2010. The Sixth Circuit Court’s ruling in *Blewett* cures this unjust outcome.

Therefore, the revised mandatory minimum sentences of the Fair Sentencing Act must be retroactively applied in this case.

Conclusion

For the reasons state above, Defendant’s Motion for Reduction of Sentence [168] is GRANTED. Because Defendant’s Motion to Vacate Sentence [165] requests similar relief as that relief now granted under the Motion for Reduction of Sentence [168], the Motion to Vacate [165] is MOOT.

Therefore,

IT IS HEREBY ORDERED that Defendant's Motion for Sentence Reduction [168] is **GRANTED**. Pursuant to this order, Defendant will be resentenced on July 15, 2013 at 2:30 p.m.

IT IS FURTHER ORDERED that Defendant's Motion to Vacate [165] is **MOOT**.

SO ORDERED.

s/Arthur J. Tarnow

ARTHUR J. TARNOW

SENIOR UNITED STATES DISTRICT JUDGE

Dated: June 13, 2013